

January 8, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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Ms. Rosalinda O. Fierro
Paralegal
Records Department
Office of the District Attorney
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OR99-0046

Dear Ms. Fierro:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121079.

The Travis County District Attorney's Office (the "district attorney") received an open records request for all information contained in the district attorney's files relating to the investigation and prosecution of a particular individual. You indicate that the district attorney has released front page offense report information. *See* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). You also indicate that the district attorney has released to the requestor documents filed with the court. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code, the "law enforcement" exception, provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

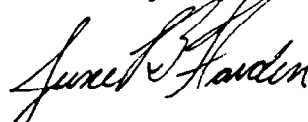
(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. You assert that because the requestor seeks the entire criminal case file, the records are protected in their entirety under *Curry v. Walker*, 873

S.W.2d 379 (Tex. 1994). In *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and that, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), "the decision as to what to include in [the file] necessarily reveals an attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. Because the requestor in this instance seeks all the information in a particular file, we agree that you may withhold all of the requested information pursuant to section 552.108 of the Government Code as attorney work product.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 121079

Enclosures: Submitted documents

cc: Mr. Mike Thompson, Jr.
Wright & Greenhill, P.C.
221 West 6th Street, Suite 1800
Austin, Texas 78701-3495
(w/o enclosures)

¹Because we are able to make a determination under section 552.108, we need not address your other claimed exception. We caution, however, that some of the submitted information may be confidential by law. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).